

3 BE IT REMEMBERED, that pursuant to Notice, and on
4 the 8th day of January 1999, commencing at the hour of
5 6:23 p.m., in the offices of Aiken & Welch, One Kaiser
6 Plaza, Suite 505, Oakland, California, before me,
7 TRISHAE L. JONES, a Certified Shorthand Reporter,
8 personally appeared ALLAN H. SMITH, M.D., Ph.D.,
9 produced as a witness in said action, and having been
10 previously duly sworn, was thereupon examined as a
11 witness in said cause.

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15 RON SHINGLER, Wartnick, Chaber, Harowitz, Smith &
16 Tigerman, 101 California Street, Suite 2200, San
17 Francisco, California 94111, appeared on behalf of the
18 Plaintiff.

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20 GERALD BARRON, Shook, Hardy & Bacon, One Market,
21 Steuart Tower, Ninth Floor, San Francisco, California
22 94105, appeared on behalf of the Defendant Philip
23 Morris, Inc.

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1 ALLAN H. SMITH, M.D., Ph.D.,
2 previously sworn as a witness,
3 testified as follows:

4 EXAMINATION BY MR. BARRON

5 MR. BARRON: Q. Are you ready to proceed?

6 A. Yes.

7 Q. If at any time you need to take a break or
8 recess, obviously, just let me know. We can certainly
9 take one in about an hour. That's my custom, but I
10 sometimes lose track of time. And if for any other
11 reason such as the schedule you've been keeping or the
12 hours you've been keeping you're having trouble
13 following my questions or giving what you think are
14 your best answers, let me know and we'll address that
15 situation and deal with it as best we can. We'll
16 maybe even have to continue to another day. But
17 hopefully we can plow through and finish tonight.

18 A. I hope we finish.

19 MR. BARRON: Off the record.

20 (Discussion off the record.)

21 MR. BARRON: Q. During the first session of
22 your deposition and near the end of it, I asked you
23 something along the lines of what opinions you have
24 been asked to provide or what opinions are you likely
25 to provide at trial in this case if you are called as

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1 a witness, and you discussed and listed several things
2 in response to that answer -- that question rather.

3 One of the things you said was the following:
4 And I'm going to read it slowly to you, and if you
5 need I'll even show it to you, if you like because I
6 had the court reporter type that up to aid the
7 questioning here tonight.

8 One of the things you stated was, quote, "I
9 would expect to be testifying that while molecular
10 biology and genetic steps are involved in lung cancer
11 formation, that there's no major familial pattern of

12 lung cancer, that the causes are external, even though
13 individual susceptibility factors may modify risk,"
14 close quote.

15 You used the phrase in that response, quote, "no
16 major familial pattern of lung cancer," close quote.

17 Is there a familial pattern at all?

18 A. Well, there is, but if one takes away the
19 major risk factors, then the evidence, as I understand
20 it, is very weak, and there may be none. I have not
21 reviewed that in detail recently. And what I was
22 referring to or would state is that there's nothing
23 like some cancers such as a certain type of colon
24 cancer that runs in families. There's nothing like
25 that with lung cancer.

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1 Q. When you say, quote, "major risk factors,"
2 what risk factors did you have in mind?

3 A. That was in the middle of that statement,
4 wasn't it?

5 Q. No, it was in the middle of your last
6 answer just now.

7 Do you want to have it reread, your answer?

8 A. Well, I was just referring to the familial
9 polyposis coli which the family is the key risk
10 factor. I think that's what I was referring to. But
11 if that's not clear, then let me hear the answer.

12 MR. BARRON: Sure. She'll read it back to you.

13 (Record read.)

14 THE WITNESS: I'm sorry. I know what I was
15 referring to. If you take smoking as a major
16 population risk factor for lung cancer, then there is
17 a tendency to find smoking in some families and not in
18 others. So, there is, therefore, a secondary
19 association between lung cancer and families that is a
20 consequence of the major risk factor of cigarette
21 smoking.

22 The same, although on a much more minor scale,
23 can occur in some occupational settings where father
24 and sons may be exposed, for example, to asbestos and
25 one may, therefore, get a parent association with

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1 families that's really secondary to the major risk
2 factor of asbestos.

3 MR. BARRON: Q. So do I understand you then
4 correctly that what you're saying is that of those
5 risk factors, whether minor or major that exist in
6 relationship to lung cancer, if you take away these
7 two that you've identified, smoking and occupational
8 exposures to certain substances, then there is not any
9 familial pattern of lung cancer that remains.

10 A. No. I gave those two as examples.
11 Obviously, the key one is smoking. I have, as I
12 pointed out, not reviewed the literature in detail,
13 but whatever familial pattern is left after excluding
14 what one could call the external causal factors is
15 very weak in contrast to some specific cancers which
16 run in families.

17 Q. What I'm trying to find out is if one
18 eliminates all risk factors other than to the extent
19 it's a risk factor at all, familial relationship, does
20 familial relationship remain to any extent as a risk

21 factor for lung cancer?
22 A. I have not researched that question
23 recently, as I've indicated to you. I am aware that
24 if you enumerate the external causal factors and the
25 attributable risks associated with them, they would

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1 appear to explain all or -- that there is no need to
2 invoke any other causes than those external factors we
3 know already.

4 But there still may be some genetic
5 susceptibility that may have some familial part. So
6 it wouldn't surprise me if there wasn't still some
7 apparent link of risk with families even when one did
8 try to take into account what one knew of these
9 factors.

10 Another one that runs in families is diet, and
11 although it's not itself a risk factor, it is a
12 modifying factor. So if you have families who are,
13 say, vegetarian or high vegetable/fruit consumers,
14 they may have reduced risks that may appear to run in
15 families.

16 Q. So as you sit here this evening, you don't
17 know one way or the other whether there is any genetic
18 susceptibility that has been identified to the
19 satisfaction of scientists that you think is reliable
20 for a susceptibility to lung cancer?

21 A. Well, that as a dominant inherited
22 characteristic, the answer is no, I don't. As I've
23 indicated, I haven't researched it in detail. It's
24 not that there isn't genetic susceptibility. What I
25 was answering related to your question, not what runs

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1 in families. So it would need to be an inherited
2 genetic characteristic.

3 Q. Okay. Again, as you sit here this
4 evening, you're not aware one way or another whether
5 there is any reasonably documented evidence that there
6 is an inherited genetic susceptibility, whether minor
7 or modest or major to the development of lung cancer;
8 is that correct?

9 A. Well, I know there's nothing major. I
10 haven't researched the literature in detail recently
11 to know what the current state of evidence is about --

12 Q. About minor?

13 A. -- about minor familial pattern that might
14 be inherited that might relate to susceptibility.

15 Q. What are all the risk factors that you
16 believe appropriately are identified with the
17 development of primary lung cancer?

18 A. Well, I haven't got a complete list. I
19 can give you ones that include those established
20 external causal factors that I think I listed last
21 time.

22 Q. You did list them last time. I wanted to
23 make sure that that list was as exhaustive as you
24 could make it based on recollection without aid of
25 researching it.

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1 A. Well, then I guess I need to hear what I
2 said last time if you want me to answer that question.

3 Q. Well, why don't you just do it again. I
4 don't have the transcript for last time.

5 A. Well, I just listed off the top of my head
6 obviously cigarette smoking. We, I think, mentioned
7 asbestos, cadmium, chromium, nickel, silica, diesel
8 exhaust, PAHs, radon, BCME. There's settings of coke
9 oven workers, but that would come under the category
10 of PAHs. I'm sure I've missed some in there. But
11 those are the ones that spring to mind. Arsenic is,
12 of course, another one.

13 MR. BARRON: Could you quickly read the first
14 part of that list again.

15 (Record read.)

16 MR. BARRON: Q. Are there any other factors,
17 meaning risk factors, to the development of primary
18 lung cancer that don't fall under the heading, quote,
19 "external causal factors," close quote, but are
20 nevertheless risk factors, such as mentioned earlier,
21 diet?

22 A. Yes, there are factors which one could
23 call effect modifying factors that are not causes in
24 themselves but may influence the risks resulting from
25 the external causes, and diet is the major group.

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1 Q. Any others that you can think of or that
2 you're aware of?

3 A. It does depend on how one defines risk
4 factors. I generally keep the term risk factor to
5 refer to factors that are either causal or modifying
6 risks by direct biological mechanism. Of course if
7 one uses the term risk factor much more broadly, then
8 age is a risk factor; socioeconomic status is a risk
9 factor; sex is a risk factor. You name it. One can
10 come up with many factors that may be related to the
11 external causes or to the modifying factors which
12 would have an apparent risk prediction, at least, even
13 if I wouldn't classify them under the rubric of true
14 risk factor.

15 Q. I understand. As to diet, can you be more
16 specific as to what type of diet becomes an effect
17 modifying factor for the development of primary lung
18 cancer?

19 A. There is evidence that consumption of
20 fruit and vegetables reduces risks of lung cancer.
21 It's not so clear what the constituents are that are
22 involved. The ones that have been thought about or
23 studied or discussed include retinol, the carotenes,
24 beta carotene in particular; selenium, tocopherol,
25 vitamin C. Those are some of them.

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1 But it's not clear or it hasn't become clearer
2 over the years just which constituents are actually
3 involved. And, in fact, the strongest evidence does
4 relate to general vegetable and fruit intake with
5 somewhat mixed evidence when one looks at the
6 individual micronutrients.

7 Q. And these that you've listed have the
8 modifying effect of increasing the risk of development
9 or decreasing?

10 A. Decreasing. I was referring to all of
11 these factors of modifying factors that are present in

12 the diet, in the normal diet, are related with reduced
13 risks.

14 Q. Are there any foods --

15 A. Let me make myself clear that all those
16 that I listed, it's not established that they
17 individually reduce risks, but it is clear that there
18 is something in the vegetable/fruit diet that is a
19 reducing risk. What we're not so clear about as even
20 we thought 10 years ago exactly what it is and what
21 they are.

22 Q. In your opinion, are there any foods that
23 have the effect of increasing the risk as a modifying
24 factor? And, again, I'm speaking of increasing the
25 risk of the development of primary lung cancer.

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1 A. No. It's always possible that there's
2 something in the non-fruit/vegetable diets that are
3 modifying to increase risk, but I don't know of any as
4 I sit here that I'd say that plausibility associated
5 with them.

6 Q. You also mentioned during the first
7 session of your deposition that you would expect to be
8 testifying, quote, "that there have been a large
9 number of attempts over the years by the tobacco
10 industry to raise red herrings about smoking and lung
11 cancer, and unfortunately, those attempts continue to
12 this day," close quote.

13 I'd like to ask you about that comment, if I
14 might, okay?

15 A. Yes.

16 Q. First of all, could you identify what you
17 had in mind or presently do have in mind as to what
18 constitutes, to use your terms, the, quote, "attempts
19 that continue to this day," close quote?

20 A. You mean the current ones?

21 Q. Yes.

22 A. Well, I think the current one is that this
23 case is being defended and I'm here at a deposition is
24 part of it. There have been and are continued efforts
25 in different parts of the world and the United States

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1 to imply that there is such a thing as safer
2 cigarettes than others, low tar, implications by
3 advertising that there are happy lives, good looking,
4 jovial people associated with smoking. I think the
5 whole international strategy of the tobacco companies
6 is to promote the product that subliminally it appears
7 that it's beneficial to people's lives. I find it
8 hard to talk calmly about that. But have I answered
9 your question?

10 At least currently there have also been repeated
11 attempts to deny the addictive nature of nicotine, and
12 there's also been the extensive political influencing
13 by huge donations over the years, but I think any
14 product which kills a large proportion of regular
15 users and causes health effects in almost all users
16 that is sold and continues to be sold legally, that
17 there's an extensive amount of deceptive and
18 programmed work undertaken to maintain that status and
19 currently expand the market internationally in ways
20 that fill me with disgust.

21 Q. Have you completed your answer?
22 A. No. I could go for the next hour. Could
23 you repeat the question? I want to make sure I've
24 answered it properly. I do find it hard to talk
25 calmly about some of these things. But it's not what

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1 I was referring to -- could I hear the question again
2 and just make sure?

3 Q. I'll let you hear your answer just to make
4 sure you've given me your most encompassing response
5 because I'm going to ask you about components of it
6 when you finished your answer.

7 A. Just the question.

8 MR. BARRON: Well, she's the best one to tell
9 you that because she took it down verbatim. So I
10 don't know if I can repeat it verbatim. I'll ask her
11 to repeat it back to you.

12 (Record read.)

13 THE WITNESS: The support given which continues
14 internationally; the payment to the film industry to
15 have stars smoke during films, even when it has no
16 part in the film, nor is it necessary; the battles
17 against the evidence on passive smoking, which have
18 more recent times.

19 But in all of these what I mean by "red herring"
20 is that rather than a direct examination of evidence
21 or presenting of information is this diversion into
22 implications that are not direct messages but indirect
23 and, therefore, more powerful in implying that smoking
24 is associated with, as I said, a good, happy, joyous
25 lifestyle, sports, the arts, film stars, you name it,

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1 mass deception.

2 Q. So am I understanding you correctly then
3 when you use the phrase, quote, "raise red herrings,"
4 close quote, you are using it in a way that is
5 expansive and includes any effort on the part of the
6 tobacco company or companies to continue to market and
7 sell their product?

8 A. Well, that's not what my answer was. I
9 think the answer speaks for itself. But could I also
10 say that --

11 Q. I'm not sure that does speak for itself,
12 and I'm not sure that my characterization was unfair.
13 If you think it was, I need you to say, "No, that's
14 not what I mean."

15 A. That sounds like a different question to
16 me. I don't think the tobacco companies should have
17 continued. I think they should have been made
18 illegal. I think they have a product that amounts to
19 mass murder. And what I wanted to add about red
20 herrings is that initially the red herrings are more
21 obvious.

22 And so in answer to your question, can I
23 complete the answer to the question I gave before?
24 Because you asked me and then you diverted me to the
25 recent ones, but I had answered red herrings from the

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1 past to the recent.

2 Q. What you can do -- I don't want to get

3 crossways with you because you wanted to say a lot of
4 things last night, and when I tried to limit it we got
5 into a little difficulty, and I understand you feel
6 strongly about this.

7 I would like to, however, investigate your
8 opinions seriatim as I sort of develop them in my list
9 of importance. And I was trying to focus you on just
10 the present. I was going to let you go back and talk
11 about the past in a moment, but in order that we have
12 a transcript that's understandable, I'd kind of like
13 to keep it in some logical segments unless you are
14 opposed to that.

15 A. No, I'm just accustomed where if I'm not
16 asked or given the opportunity to complete my answer,
17 that it be excluded in court. That's why I indicated
18 that I had more to say.

19 Q. You have an lawyer here to protect the
20 interests of your part of this.

21 A. Let's go on.

22 Q. And I know you've had a lot of depositions
23 before.

24 So I'm not clear I have an answer to what you
25 have in mind when you use the phrase "raise red

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1 herrings." Your answer led me to believe that in
2 terms of how tobacco companies are presently raising
3 red herrings, you have included many things that are
4 part of activity that could be viewed as the promotion
5 and sale of a product as opposed to raising
6 specifically some false information about smoking and
7 lung cancer.

8 And I wanted to know if you felt that you were
9 doing that or my view of what you were doing was not a
10 fair characterization of it.

11 A. Well, to answer it, I need to go back to
12 the earlier time period where it's more clear what the
13 red herrings used to be, and I can note that they
14 evolved into this more subtle diversion. So it's
15 rather than direct raising of red herrings now, it's
16 much more clever.

17 Q. So just so I understand it, are you saying
18 that there are no red herrings presently being raised
19 by tobacco companies about smoking and lung cancer, or
20 are you saying they're still being raised but they are
21 subtle red herrings, some kind of lighter-colored,
22 pinkish type herrings or just what?

23 A. Well, I think as far as I know, the
24 tobacco industry doesn't get up and say smoking
25 doesn't cause lung cancer except maybe in court cases

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1 like this. I think it would be stupid for them to do
2 it because the evidence is overwhelming and it has
3 been for many years.

4 So instead of them trying to say smoking doesn't
5 cause lung cancer, the approach seems to be, well,
6 smoking is linked to a very happy life; children or
7 young people -- I'm talking about overseas -- running
8 around happily, very beautiful people, and it's,
9 therefore, not directly saying smoking doesn't cause
10 lung cancer. It's trying to divert from that, raise
11 red herrings. It promotes a beautiful life; you'll

12 enjoy it; it's good for you.
13 It used to be it was much more direct; it was an
14 argument smoking doesn't cause lung cancer. And those
15 red herrings were things like it's the psychological
16 personality of the person who smokes and something
17 related to that. It's not the tobacco. All sorts of
18 red herrings used to be raised that were much more
19 obvious.

20 Q. We may go back in a moment, but if you
21 would allow me to go to what I feel I should go to
22 especially because of the need that we both have to
23 wrap this up in some type of a timely way, I would
24 like to still stay with the present if I could.

25 Is that agreeable with you for the moment?

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1 A. I'll answer your questions as I would in
2 court.

3 Q. It is your view that because the product
4 permits mass murder and because the tobacco companies,
5 therefore, are mass murderers, the product should be
6 made illegal?

7 MR. SHINGLER: Objection; mischaracterizes his
8 testimony.

9 MR. BARRON: It's a different question, a
10 stand-alone question.

11 MR. SHINGLER: Same objection.

12 THE WITNESS: Well, not necessarily. The
13 strategic approach wouldn't necessarily involve that,
14 I think. One of the things I do think is there should
15 be wider advertising that around about two out of five
16 regular users will die from the product and that the
17 tobacco companies should be required to do that. I
18 think if you make something illegal, you get the
19 societal ramifications that you may have a black
20 market, and it's not necessarily the straightest way
21 to go.

22 I do think that the tobacco companies should pay
23 for all health consequences of smoking and all those
24 who suffer from it and that one could still have a
25 legal product, I suppose, and incorporate that in the

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1 price.

2 I think one can make an argument that it should
3 be made totally illegal, but it's not necessarily the
4 quickest nor the best way to stop smoking. So
5 therefore, I don't know. I think one of the pros and
6 cons to that --

7 MR. BARRON: Q. Did I misunderstand your
8 earlier answer when I asked you your opinion about --

9 A. No, no. Did I say I thought it should be
10 made illegal? I think tobacco companies produce a
11 product that are what is the origin of mass murder.
12 And those who defend them are defending mass
13 murderers. It ought to be unethical. It ought to be
14 in the long run illegal, but whether the quickest way
15 to solving the problem is to make it illegal or not,
16 I'm not absolutely sure.

17 There's extensive arguments on marijuana, for
18 example, about that, and it's not necessarily the best
19 public health policy to make a certain thing illegal.
20 And I'm not sure, therefore, whether it ought to be or

21 not at this step.
22 Q. And it is whether cigarettes and smoking
23 cigarettes ought to be made illegal or not is what
24 you're talking about?
25 A. Right. I think that -- I have some very

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1 clear things I do think for sure. But whether you
2 could pass a new law or not tomorrow, I don't know
3 whether that's the quickest nor best approach. In the
4 long run, I certainly think it should become illegal
5 to produce a product that kills two out of five
6 regular users.

7 Q. What do you mean by "the long run"?

8 A. Into next century sometime. What's the
9 quickest way to stop the smoking scourge and the
10 deaths it's causing, I'm not sure. Making a product
11 illegal might not be the quickest way.

12 Q. Were you a proponent of or an opponent of
13 or took no position concerning the recent proposition
14 to raise the tax by fifty cents per pack in
15 California?

16 A. I was not involved in that.

17 Q. That's not my question. She'll read it
18 back to you.

19 (Record read.)

20 THE WITNESS: Same answer. I don't know what
21 your question means then if my answer isn't clear. I
22 didn't make any public --

23 MR. BARRON: Q. Were you in favor of, were you
24 not in favor of, or did you have no opinion concerning
25 whether the recent proposition should become the law

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1 of California concerning raising the cigarette tax by
2 fifty cents per pack?

3 MR. SHINGLER: I'll object on the basis of
4 relevancy and outside of the scope of discovery.
5 Perhaps intrusive of his private affairs. I'm also
6 not sure if it's in the scope of the epidemiological
7 areas that he's to testify in.

8 THE WITNESS: I presume your question related to
9 my professional work. I didn't give any public
10 speeches on it. If you're talking about my personal
11 opinion, it should be raised very much more than that.
12 You wouldn't have to raise it. I wouldn't even argue
13 that it should be raised if the tobacco companies
14 would take full liability for all disease caused by
15 the product.

16 MR. BARRON: Q. Do you have an opinion as to
17 how much the tax should have been raised?

18 A. No.

19 Q. Do you have any parameters?

20 A. I haven't done the economical calculations
21 as to what the price should be to cover all the health
22 consequences and suffering and misery and all the rest
23 of it. I think it's very hard to document.

24 Q. Do you hold a similar opinion concerning
25 other choices that people are presently at least

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1 legally permitted to make concerning the consumption
2 of products which you believe you know increases their

3 risk factor for disease by a significant extent?
4 MR. SHINGLER: Objection; vague and overbroad.
5 THE WITNESS: No. I know nothing else that's
6 remotely like cigarette smoking in that regard. So
7 the answer is no. I'm aware, of course, that alcohol,
8 for example, does damage and causes serious disease in
9 some people, but it's nothing like the numbers that
10 relate to cigarette smoking. So I would put it
11 entirely in a different camp.
12 MR. BARRON: Q. So, for example, you don't have
13 the view that in any way there should be an effort to
14 tax or to get the manufacturers or retail sellers of
15 products containing significant amounts of cholesterol
16 to try to recoup whatever health costs are associated
17 ultimately with the consumption by people of those
18 high cholesterol products?
19 A. I think not directly, no. I do think that
20 those who produce the products should identify the
21 amount of cholesterol in them and also be contributing
22 to studies and research investigating the health
23 consequences of the product and also be contributing
24 to treatment.
25 But the impact is nothing like smoking, and in

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1 any case cholesterol is an inevitable part of all
2 diets to some degree. So it's not the same sort of
3 thing.
4 Q. Although it's part of a lot of foods, it
5 certainly is found in enormous percentages and in
6 enormous milligrams in certain kinds of foods that are
7 not foods of necessity for the survivability or health
8 of humans, correct?
9 A. Yes.
10 Q. And when that's the case, is it your
11 opinion that, again, the health consequences of
12 consumption of that unnecessary high cholesterol
13 should be borne by either the consumer of the high
14 cholesterol foods or by the manufacturer or retailer
15 of the foods or both?
16 A. Well, I think as I've indicated, I think
17 the manufacturer or marketer of a product have several
18 responsibilities. One is to point out that you
19 shouldn't take much of this. You can have a high
20 concentration cholesterol item in a diet and still
21 consume it and not have a major impact on total
22 cholesterol.
23 Certainly I do think that the health
24 consequences should be identified and that the
25 producers should be involved in the research and

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1 public health education to make people aware so that
2 if there is a high amount of cholesterol in something
3 they don't eat a lot of it every day. They may only
4 have it once a week or at Christmas time. I had cream
5 in New Zealand. Whipped cream is so much nicer than
6 anything you get here, and I only have it once a year.
7 Q. Your opinion would be that if such
8 manufacturers were not willing to voluntarily do it,
9 as a matter of what you might call ethics, they should
10 be required to do it as a matter of law by the
11 imposition of either liability on them for a health

12 consequence or a tax on them or a tax on the consumer
13 of their products or some combination?

14 A. No, I wouldn't necessarily say that. I
15 think that if a product kills two out of five users,
16 we're in a totally different ball game, and I don't
17 automatically regard attacks or payment of the health
18 consequences in those other areas as the way to go.
19 But they're dealing with products that are nothing
20 like cigarette smoking.

21 Q. So, for example, you believe that the fast
22 food franchises of the United States have thus far
23 acted reasonably and responsibly up to this point and
24 have no further obligations from your point of view
25 that would justify the imposition, if not voluntarily

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1 undertaken by them, of further efforts at their cost
2 or the cost of those who consume the products?

3 MR. SHINGLER: Objection is vague and ambiguous,
4 outside the scope of discovery, not altogether sure
5 that it's within the scope of the area within which
6 Dr. Smith has been designated to testify.

7 THE WITNESS: Well, they have been required to
8 identify the constituents of their products, and
9 that's reinforced, and there's a cost involved.

10 MR. BARRON: Let me just interrupt.

11 MR. SHINGLER: You don't need to interrupt him.
12 Let him finish.

13 MR. BARRON: Q. I was only trying to interrupt
14 you to try to get an answer to the question which is
15 not what they have done. But I think my question was
16 whether you believed that more should be imposed on
17 them if they weren't voluntarily going to do it,
18 involuntarily in the form of liability or tax on them
19 or their consumers.

20 I'll have the question reread.

21 (Record read.)

22 THE WITNESS: Compound and unintelligible.
23 Please repeat the question. I was trying to answer
24 what I thought it meant. It's a very long question,
25 and I don't understand it.

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1 MR. BARRON: Q. You don't understand that
2 question?

3 A. Not if you interrupted my answer, no.
4 It's very long. It's not clear to me.

5 Q. What isn't clear about it? I'll be happy
6 to rephrase it.

7 A. What wasn't I answering? You ask a very
8 long question like that; I just start off my answer.
9 And you interrupt. So I don't understand it.

10 Q. If you can answer this question yes or no,
11 I'd appreciate it. And then following that, I would
12 be happy to have you say whatever else you'd like to
13 say to qualify your answer. If you're unable to
14 answer this question yes or no, please tell me you
15 can't and I'll ask you why you can't answer this
16 question yes or no.

17 The question is do you have the opinion
18 presently that the fast food franchises of the United
19 States have to this point acted so reasonably and
20 acceptably in terms of the manufacture and promotion

21 and sale of their products that they do not have any
22 obligation to undertake some further activities
23 voluntarily or if they refuse voluntarily to be taxed
24 or have their customers taxed?

25 MR. SHINGLER: The same objection I raised

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1 earlier along the lines of relevancy and scope of
2 discovery and scope of the area within which this man
3 has been designated to testify as an expert.

4 THE WITNESS: It's a very long-winded question.
5 There's a lot of parts to it.

6 MR. SHINGLER: Can you break it down?

7 MR. BARRON: Q. Can you answer it?

8 A. Can't you break down a part?

9 Do I think they should be taxed, I don't know.
10 I'm not an expert on tax and how it should be done.

11 Q. Do you think up to this time all the fast
12 food franchises have acted reasonably and done all you
13 think that they should be required to do to meet their
14 obligations, if any, that you think they have because
15 of the products that they manufacture and promote and
16 sell --

17 MR. SHINGLER: It's compound, overbroad. It's
18 vague.

19 THE WITNESS: If your question is do I think
20 they could do more, they could do more to promote
21 health.

22 MR. BARRON: Q. Is it your opinion that they
23 should be required by law to do more if they don't
24 voluntarily do more?

25 MR. SHINGLER: If you have an opinion.

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1 THE WITNESS: Well, you're asking me a question
2 that requires me to explain an answer. So I don't
3 know -- you want yes or no, so I would say they should
4 be required to do more. They did lose some suits on
5 selling very hot coffee. And they started lowering
6 the temperature. And I think that was good.

7 They have been required to reveal the contents
8 and their cooking methods. And as I understand it,
9 some of that has started to change to use less
10 saturated fats. I think there needs to be pressure on
11 all things in society that may impact health of the
12 community.

13 MR. BARRON: Q. Do you believe they are paying
14 their fair share for the health consequences of the
15 consumption of their product presently?

16 MR. SHINGLER: Same objections, and --

17 MR. BARRON: You can have a continuing
18 objection. I'll let you have it to form and any other
19 basis.

20 THE WITNESS: Well, there may be also beneficial
21 health consequences by reducing the price of food to
22 certain communities. I don't have an assessment.

23 MR. BARRON: Q. You don't have an opinion?

24 A. No.

25 Q. Same question as to manufacturers and

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1 sellers of eggs.

2 MR. SHINGLER: Before we start, we do have a

3 continuing objection?
4 MR. BARRON: To anything. Any grounds that are
5 possible, you can have.
6 MR. SHINGLER: I object on all possible grounds.
7 MR. BARRON: To every question.
8 MR. SHINGLER: To every question?
9 MR. BARRON: I stipulate.
10 Q. Do you have the question still in mind?
11 That was a short one.
12 A. Eggs are an important source of food.
13 MR. SHINGLER: I don't think there was a
14 question. You indicated an area you were going to go
15 into.
16 THE WITNESS: Which of those long questions you
17 asked me about eggs.
18 MR. BARRON: Q. Can I get a "yes" or "no" to my
19 question and then any explanation you want to give
20 after it, Doctor.
21 A. The question is do you have the same
22 something about eggs. I need to hear the question.
23 Q. Do you have an opinion that manufacturers
24 and sellers of eggs have met their fair burden for
25 whatever health consequences are associated with the

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1 manufacture and sale of their products?
2 A. I don't know any data to assess it.
3 Q. You have no opinion?
4 A. No. There are beneficial effects of
5 eating eggs as well as overeating may result in
6 disease. There are many products like that that if
7 they're misused, it may cause harm, but if used
8 properly are beneficial.
9 Q. Do you have an opinion as to whether or
10 not the manufacturers and retailers of eggs have
11 appropriately disclosed to the public the health
12 consequences, if any, associated with the intake of
13 cholesterol in eggs and have made the appropriate
14 recommendation to members of the public about how
15 frequently to eat eggs?
16 A. I don't know.
17 Q. Have you no opinion?
18 A. I have no expert opinion on it.
19 Q. Is there any other manufacturer or
20 promoter or retailer of any products consumed by
21 Americans other than tobacco companies that you
22 believe have not met what you think their obligations
23 are to adequately pay for the health consequences of
24 the use of their products?
25 A. Well, tobacco is not consumed, Counsel.

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1 Q. Do you want to change the word to "use"?
2 A. Well, your question is internally
3 inconsistent.
4 Q. I don't want to debate with you about
5 whether it is --
6 A. You implied that consuming tobacco is the
7 same as consuming food, eggs, fast food, and it is
8 not.
9 Q. Change the word to "use."
10 A. I think the marketing of alcohol should
11 include warnings, and there could be more information

12 required to be given and that the health consequences
13 of overconsumption and the costs involved should be
14 met by those marketing alcohol products.
15 Q. And they haven't been adequately met thus
16 far?
17 A. I haven't studied that in detail, no.
18 Q. But you suspect they haven't, or you have
19 no opinion at all?
20 A. I don't know. There is a tax on those
21 products, and what degree it may meet the societal
22 costs, I don't know. I haven't studied it.
23 Q. Is that the only product manufactured,
24 promoted and sold in the United States that you think,
25 other than tobacco, might not be meeting the

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1 obligation to fairly pay for the health risks
2 associated with use or consumption of such products?
3 A. It's the only one that comes to mind.
4 There is in the use of motor vehicles an accident
5 rate, and there is requirement for safety, and the
6 automobile industry has not been required to directly
7 meet the health consequence of having accidents, but
8 it is clear that transport is an essential part of
9 human living, so I regard that as a different
10 category, just as consuming food is an essential part
11 of human living.
12 Therefore, I put those in a separate category.
13 And there may be many like that that are an essential
14 part of human living that one could say aren't
15 necessarily meeting the costs of misuse of those
16 products.
17 Can we have a break soon?
18 MR. BARRON: As I said, any time that you want
19 one.

(Recess taken.)

21 MR. BARRON: Q. Doctor, in the first session of
22 your deposition, you indicated that you may be
23 testifying that for smokers of the order of two or
24 three packs of a day, different studies have produced
25 a different range of increased risk. And you went on

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1 to say, quote, "a very broad estimate would be roughly
2 a 30-fold increased risk of lung cancer. Some studies
3 find quite a bit less than that. Some studies find a
4 lot more," close quote.
5 Can you identify for me which studies find a
6 30-fold or greater risk of lung cancer from or
7 associated with smoking at that level of smoking of
8 two or three packs a day?
9 A. I don't recall offhand all the studies.
10 Some of them are referred to here. Most of the
11 studies are ones that I've read many years ago. But
12 in the -- one is the British physicians study produces
13 estimates of that order, the American Cancer Society
14 study also.
15 Q. Would you point, please, when you're doing
16 this, to which Surgeon General's report you have
17 reference to and on what page and what particular
18 graph or other presentations of the material you're
19 looking at?
20 A. This is the 1982 report called The Health

21 Consequences of Smoking: Cancer.
22 Q. From the Surgeon General.
23 Did I say Attorney General?
24 A. Yes.
25 Q. Can we stipulate that we put in Surgeon?

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1 Is that okay with you?
2 MR. SHINGLER: Yes, that's okay with us.
3 MR. BARRON: That we substitute the word Surgeon
4 General.
5 THE WITNESS: As long as you change careers and
6 become a surgeon.
7 I'm sorry. The U.S. veteran -- it's table six
8 that I was citing from.
9 MR. BARRON: Q. At what page?
10 A. It doesn't give in this table all the
11 specific data laid out for three packs a day, but as I
12 recall both from the numbers given here, one would
13 either expect estimates like I described, or they are
14 given, but I only, as I indicated, read these many
15 years ago.
16 So it's on page 38. I mentioned, I think I got
17 to the U.S. Veterans study, yes.
18 Q. And on those pages and related to those
19 studies, is there actual reference to a 30-fold or
20 greater increase?
21 A. No, no. When I'm referring to 30 was last
22 time. It's a ballpark estimate, and there's a wide
23 range that are around and of that order. And in these
24 tables, they don't -- that are abstracted here, they
25 don't separate out those who smoke three packs a day.

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1 The highest category in each of these or in at least
2 three of them goes up to two or more packs a day. So
3 the inference would be that the risks for those who
4 actually smoke three packs a day would be higher.
5 Q. Do you mean to be indicating now that you,
6 in order to reach the opinion that you provided in
7 last session, in essence, interpolated from studies,
8 or did you actually have in mind studies that you
9 could not precisely cite?
10 A. Well, over the years, I've reviewed many
11 studies in detail and came to the opinion that a
12 ballpark figure for one pack a day was around about a
13 tenfold risk, and two packs a day around about 20, and
14 three packs a day around about 30. And I can't tell
15 you all the individual studies on which I reached that
16 opinion, other than these include some of them. I am
17 aware, as I indicated, that some studies find much
18 higher than that and some much lower, but all of them
19 find markedly increased risks.
20 Q. Do you agree --
21 A. Can I just comment, by the way, that I
22 just cited the prospective studies. There are other
23 studies, but these are just the ones that I've listed.
24 Q. Do you agree that attributable risk
25 doesn't directly give you information helpful in

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1 establishing a cause-and-effect relationship?
2 A. Well, yes and no. The answer I think is

3 no, but I wouldn't dismiss it. I would say that I
4 would normally calculate attributable risk after
5 reaching a conclusion that an agent did cause the
6 disease. So in the process of making causal
7 inference, I wouldn't normally use attributable risk.
8 Q. Do you agree that when attributable risk
9 is used for cause-and-effect relationships, those
10 doing that are basing the inference on the rarest
11 criteria for causal inference?
12 A. I don't think I heard you right. The
13 "rarest," did you say?
14 Q. Yes.
15 A. I don't know what you mean.
16 Q. You have no idea?
17 A. I don't know what you mean.
18 Q. Do you agree that what attributable risk
19 is used for by you and other people who are
20 knowledgeable in your specialty or specialties is that
21 it's used for the impact on public health?
22 A. That's the major use. It's not the only
23 one, but it's the most common usage. What one is
24 doing is the proportion of cases that would have never
25 occurred if there had never been that exposure.

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1 That's what one is doing.
2 Q. And attributable risk for that reason is
3 used as opposed to being used to establish a
4 cause-and-effect relationship, correct?
5 A. I am confused, because I thought I had
6 answered that.
7 Q. I just want to link the two thoughts
8 together.
9 A. Well, you normally consider attributable
10 risk after you have decided an agent is a cause. Now,
11 you may in the process say, well, if I determine it is
12 a cause, then this is what the impact might be if that
13 exposure could be prevented, but they are two separate
14 exercises.
15 Q. Could you identify what journals, texts or
16 authors you consider authoritative on the issue of the
17 etiology of primary lung cancer, meaning the cause of
18 primary lung cancer?
19 A. I don't know how to answer that question.
20 I don't regard any sources as authoritative. I don't
21 regard texts as original sources. I think there's a
22 vast body of literature, and it's an assessment of
23 that that makes the inference absolutely clear as to
24 smoking causing lung cancer.
25 Q. Have you made any speeches or public

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1 presentations regarding cancer and the relationship,
2 if any, to cigarette smoking?
3 A. Yes.
4 Q. Where?
5 A. I'm doing it all the time. You said --
6 Q. Speeches?
7 A. Scientific meetings.
8 Q. Yes. You do that all the time?
9 A. Right.
10 Q. Do you have any transcripts?
11 A. I have publications but not transcripts

12 of --
13 Q. Your speeches?
14 A. -- the speeches, no.
15 Q. Do you know whether any such exist,
16 whether you have them or not?
17 A. Well, some come out as publications after
18 I've presented them at a meeting, but those are the
19 only ones that I have written them for.
20 Q. Sometimes at meetings do they have
21 presentations recorded either by audio cassette or by
22 a court reporter?
23 A. No. I suppose if there's an attorney in
24 the audience. Scientists don't do that.
25 Q. Were you a member of any organizations

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1 with official policies regarding cigarette smoking?
2 A. I'm not. Most of the organizations I
3 belong to are scientific organizations. The American
4 Public Health Association is one I belong to, but I'm
5 not aware of whether -- they have certainly made
6 official statements about smoking at various points in
7 time.
8 Q. Are you a member of the American Cancer
9 Society, for example?
10 A. No.
11 Q. Have you ever been a member?
12 A. No.
13 Q. Were you asked to participate ever in any
14 of the work that evolved into any of the Surgeon
15 General reports?
16 A. I don't know what you mean by "evolved."
17 I don't know that I know what all the Surgeon
18 General's reports cite. I've never tried to find if
19 they cite any of my work.
20 Q. You were never asked to author either a
21 part or all of a chapter or section of any of the
22 Surgeon General's reports; is that correct?
23 A. Correct.
24 Q. I want to talk for a minute about your
25 previous involvement in matters of litigation.

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1 Have you been involved in cases before for
2 either Ms. Chaber or the law firm of which she is a
3 part?
4 A. Yes.
5 Q. On how many occasions has that been the
6 case?
7 A. I really don't know. I find it hard to
8 separate out by legal firms, but it has not been a
9 high proportion of the cases I've been involved with,
10 but it's been fairly regular, I'd say more than once a
11 year, two or three times a year or something like
12 that. I'm not sure, though, because as I say, I don't
13 file in my mind nor elsewhere cases I'm involved with
14 by the attorney firms.
15 Q. She and her law firm retained you in this
16 case, correct?
17 A. Yes.
18 Q. And what financial charges, if any, do you
19 make to her or her law firm in this case?
20 A. I have not made any yet.

21 Q. What's the arrangement for compensation
22 for you that you've made with her or her law firm?
23 A. There is no formal arrangement. My charge
24 is \$350 per hour for medical/legal consulting work.
25 When I deal with new topics, I don't usually charge

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1 for all the time involved, and this is the first case
2 that I've been involved with that has a litigation
3 against a tobacco company. I don't know exactly how
4 I'll work that out. But what I do charge for will be
5 \$350 per hour.

6 Q. If I understand your answer, what you're
7 saying is because this is the first case involving a
8 tobacco company and smoking-related issues and
9 litigation you have decided that you may not charge
10 for all of your time to her because some of it was
11 getting acquainted with or up to speed on some aspects
12 of the case?

13 A. Yes, more or less.

14 Q. Have you ever been retained by the defense
15 side in a civil lawsuit?

16 A. Yes.

17 Q. Have you ever been retained by a defendant
18 or defendants who were not individuals, meaning who
19 were corporations or business entities?

20 A. Well, the defendants -- I see. I was
21 retained by the legal companies, but they were
22 defending companies.

23 Q. Let me rephrase the question. You
24 understand in civil lawsuits there is a plaintiff side
25 and the plaintiff can be an individual or individuals.

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1 It can also be a company or a business that has
2 brought the lawsuit --

3 A. Yes.

4 Q. -- as the party, correct?

5 A. Yes. I understand what you're getting at.

6 Q. I want to make sure we keep a good record.
7 We're talking about law firms. On the other side you
8 have a defendant or defendants. On the defense side,
9 it can be an individual or individuals or it could be
10 a business entity or business entities or
11 corporations, correct?

12 A. Yes.

13 Q. My question is, have you ever been
14 involved where you were acting as an expert for a
15 defendant that was a business entity?

16 A. Yes.

17 Q. On how many occasions has that occurred?

18 A. I don't know. The majority of those cases
19 are settled and don't go to court, but it's every year
20 I'm involved in some cases where I'm an expert
21 retained by a legal firm who's defending usually a
22 chemical company in the United States.

23 Q. Have you also been retained by lawyers
24 representing the plaintiff's side in litigation
25 against chemical companies?

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1 A. Yes.

2 Q. What is your best estimate of the

3 percentage of time that you've been retained by the
4 plaintiff's side in civil litigation as opposed to the
5 defense side?

6 A. Well, it's varied a lot over the years.
7 I'd say that currently it's probably on the order of
8 10 to 15 percent for defendants, but it used to be
9 much higher.

10 Q. Have you ever smoked?

11 MR. SHINGLER: All of my objections are still
12 out there?

13 MR. BARRON: Sure. I might tell you so you
14 don't feel nervous about this, Ms. Chaber asks almost
15 every witness that.

16 MR. SHINGLER: I know.

17 MR. BARRON: There's a whole history behind why
18 she would ask, and likewise, there have been questions
19 asked of her witnesses.

20 THE WITNESS: I have.

21 MR. BARRON: Q. How long and when?

22 MR. SHINGLER: Just, again, for the record I'll
23 make the objection for relevancy and scope of
24 discovery and intrusiveness into the doctor's private
25 affairs. I'm suggesting that he need not answer the

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1 question, although I'm not permitted to instruct him
2 as such.

3 THE WITNESS: Well, obviously it's not something
4 that I would expect to be testifying about as an
5 expert, but I did smoke a pipe regularly when I was a
6 student and subsequently intermittently did smoke
7 cigarettes.

8 MR. BARRON: Q. For how long?

9 A. I don't want to go into details.

10 Q. It can impact, for example, motive for
11 certain approaches to opinions. It can also go to
12 bias. That's why these questions have been asked on
13 both sides of the table, meaning on the plaintiff's
14 side and the defense side in this litigation. So I
15 think it's something that you are supposed to be
16 answering.

17 MR. SHINGLER: Well, the objection stands, and I
18 would think it's something that he wouldn't have to
19 answer.

20 THE WITNESS: I think I answered the last
21 pending question. Was there another one?

22 MR. BARRON: Yes.

23 Q. For how long and during what time frame
24 was it that you smoked cigarettes?

25 A. I thought I answered that.

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1 Q. I didn't hear the --

2 A. I said that I smoked -- I said I smoked a
3 pipe regularly when I was a medical student and
4 subsequently smoked cigarettes intermittently at
5 various...

6 I don't smoke regularly or haven't smoked
7 regularly for many years, but on occasions I have.

8 Q. What years were you in medical school?

9 A. 1964 to 1970.

10 Q. When did you last stop smoking cigarettes?

11 MR. SHINGLER: I'll assert the same objections,

12 and in terms of the issue --
13 MR. BARRON: I can tie it in and --
14 MR. SHINGLER: Just permit me this opportunity.
15 The same objections that I stated previously, and to
16 the extent that there may be some relevancy on the
17 issue of bias, I think you established that he has had
18 a history of smoking, and going even further makes it
19 even more irrelevant, outside the scope of discovery
20 and unduly intrusive into the private affairs of an
21 expert who has been called to testify on
22 epidemiological matters. My speech is over.
23 MR. BARRON: Okay.
24 MR. SHINGLER: Although I would again suggest
25 that you don't have to answer.

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1 MR. BARRON: Well, don't try to encourage him,
2 because I really think the court is going to make him.
3 And I can tie it in, and I'll tell you why after we
4 do. We're not talking about someone's religion here.
5 I'm not out to embarrass him about his activities of a
6 sexual nature or anything like that.
7 MR. SHINGLER: Well, then, again --
8 MR. BARRON: For goodness sakes, let's just move
9 through this. And let's try to do it quickly because
10 it really is something that shouldn't take us much
11 time.

(Discussion off the record.)

13 MR. BARRON: Doctor, let's try to go through
14 this. If you really are going to take the position
15 you're not going to answer a question, I'm not going
16 to spend a lot of time on it. I tried to go off the
17 record to give you and counsel some idea of my
18 understanding of why the questions have been asked in
19 other depositions and the way in which it could be
20 relevant in your particular case as a witness in this
21 case, so let me just go through it quickly if I could.

22 Q. First of all, again, during what time
23 periods and for how long was it that you smoked
24 cigarettes?

25 MR. SHINGLER: I'm going to have the same

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1 objections asserted and again remind the doctor or
2 suggest to him that he need not answer the question if
3 he feels uncomfortable answering it.

4 MR. BARRON: Counsel.

5 MR. SHINGLER: Excuse me, if you want to create
6 a record along those lines, we can.

7 MR. BARRON: Counsel, please. I have given you
8 before on the record a continuing objection. You've
9 made this objection. We went off the record. You
10 don't have to keep repeating it. We're here to get
11 through with this. If he's going to take your advice,
12 he's going to make his decision based on your advice,
13 and let's go through this and get on to something
14 else.

15 MR. SHINGLER: Let's get on to something else.

16 MR. BARRON: After we go through it.

17 MR. SHINGLER: Move on.

18 MR. BARRON: I'll repeat the question. Ms.
19 Reporter.

20 (Record read.)

21 MR. BARRON: I'll do it again. If you do this
22 again, I'm going to go for sanctions.
23 MR. SHINGLER: You can't threaten on sanctions.
24 MR. BARRON: I am.
25 MR. SHINGLER: For what reason?

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1 MR. BARRON: I'm asking you to not interrupt the
2 line of questioning here. You've made a record that
3 clearly you've instructed him that he doesn't have to
4 answer. You've had a chance to advise and counsel
5 with him off the record. If he's going to decide not
6 to answer, he can do that now. He's obviously someone
7 who's intelligent enough to understand what you've
8 told him and what I've told him.

9 I want to try to get on to something else after
10 making a record on this subject. So he also gets
11 distracted when there's a long instruction and
12 objection, so to move on with this, I would like to
13 just go through these questions, let him decide
14 whether he's going to answer or not and then move on
15 to a different subject. May we do that now?

16 MR. SHINGLER: I will make an objection when I
17 feel it is appropriate to make an objection. It is
18 not intended to distract.

19 MR. BARRON: Again, you can have a continuing
20 objection on the basis of invasion of privacy or any
21 other reason you want, any other basis for this line
22 of questioning.

23 Q. Doctor, again, would you please just tell
24 me during what time periods and for how long you
25 smoked cigarettes?

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1 A. I indicated that as a medical student I
2 smoked a pipe. Subsequent to that, I did smoke
3 cigarettes occasionally intermittently and at times
4 have what I'd call relapsed to smoking cigarettes. I
5 have not smoked regularly and have not for many years.

6 I do not want to go back into further details
7 unless it's apparent that the court wishes experts
8 like me to go into personal details of their total
9 smoking histories. I have not had any relatives die
10 of smoking-caused diseases since you raised that when
11 we were off the record. I've also not had any health
12 consequences of my own.

13 Q. Can you give me the year or the time
14 frame --

15 MR. SHINGLER: If we may, Counsel --

16 MR. BARRON: Let me finish my question, for
17 goodness sakes.

18 Q. -- would you give me the year or the time
19 frame when you quit?

20 A. I have indicated that it's been
21 intermittent. I do not wish to answer any further
22 personal questions about it. I'm not going to answer
23 any more personal questions about my personal smoking
24 history.

25 Q. When did you become aware of the Surgeon
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1 General's report of 1964?

2 A. Around about 1970, I think. I certainly

3 was aware of it in 1972.
4 Q. When did you first become aware of the
5 1962 British College of Surgeons report on smoking?
6 A. I don't recall. I was aware of it in
7 1972.
8 Q. Do you believe that you were not aware of
9 either report, meaning the '62 British report or the
10 '64 U.S. Surgeon General's report until 1972?
11 A. I don't recall.
12 Q. You have no recollection one way or
13 another on that?
14 A. No.
15 Q. Under oath?
16 A. I beg your pardon, Counsel?
17 MR. SHINGLER: That's not necessary, Counsel.
18 That really is not necessary at all.
19 MR. BARRON: I'm trying to get him to test his
20 memory in light of when he was in medical school.
21 MR. SHINGLER: And he's been doing that for you.
22 He's been doing -- he's been answering your questions.
23 THE WITNESS: Everything I've answered is under
24 oath, Counsel. I'm aware of that, so I really find
25 that insulting.

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1 MR. SHINGLER: That is insulting.
2 MR. BARRON: This is cross-examination.
3 Q. I want to make sure then you really have
4 no recollection of knowing of the fact of a 1962
5 British report from the College of Surgeons or the
6 1964 U.S. report until 1972.
7 A. That is correct. I may well have heard
8 about them. They may have been raised. They may have
9 been discussed, but when I specifically recall reading
10 some of that material was in 1972.
11 Q. When you commenced smoking when you did,
12 were you aware that smoking had an increased risk of
13 causing disease?
14 A. Yes. I was in a student apartment where a
15 group of medical students thought that pipe smoking
16 might not be hazardous. When I started smoking, it
17 was only pipes.
18 Q. When you started smoking cigarettes, were
19 you aware that there was good evidence of a health
20 risk associated with cigarette smoking?
21 A. I was. I wasn't aware of the full extent,
22 but I certainly was aware that it was damaging to
23 health.
24 Q. Could you describe as specifically as you
25 could what your state of awareness was at the time you

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1 commenced smoking cigarettes for the first time?
2 A. I was aware that in the long term it could
3 cause lung cancer, chronic bronchitis, emphysema. I
4 did not think it had short-term impacts or I didn't --
5 was lacking knowledge of that. I was certainly aware
6 that in the long term there were risks from cigarette
7 smoking.
8 Q. Was your decision to start smoking at all
9 as a result of any smoking that was in any of the
10 movies?
11 A. I don't think so. The primary reason was

12 when I stopped smoking a pipe, I felt I, on occasions,
13 wanted to smoke, and the pipe had a lot of odor, and I
14 was -- didn't want it to be known.

15 Q. Who was the manufacturer of the cigarettes
16 that you smoked?

17 A. I don't remember.

18 Q. What brand did you smoke?

19 A. I don't remember. It was intermittent, so
20 it was --

21 Q. Did you always smoke one brand?

22 A. No.

23 Q. Did you always purchase one brand?

24 A. No.

25 Q. Did you ever smoke Marlboros?

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1 A. Probably, yes.

2 Q. Do you believe that your selection of
3 Marlboros when you smoked them was because of any
4 attraction to the Marlboro man or the Marlboro ads or
5 any desire to associate yourself with that imagery?

6 A. I don't know.

7 Q. Do you have an opinion as to whether or
8 not the brand or brands you smoked when you smoked
9 them were brands that were targeted towards youth or
10 children?

11 A. At that time, I didn't know.

12 Q. Do you have an opinion now?

13 A. I suspect so, but I don't know for sure.

14 Q. Do you have an opinion as to whether you
15 were addicted to smoking?

16 A. I know I repeatedly decided never to smoke
17 again, and would still on occasions smoke, and there
18 were, therefore, some characteristics of addiction.

19 Q. Did you suffer, in your opinion, from any
20 physiological withdrawal symptoms or syndromes?

21 A. No. I don't think so. I didn't smoke to
22 that extent. It was more -- the answer is no. I
23 think that it was more on occasions in certain
24 circumstances I felt an urge to smoke, and then I
25 would do so and then stop again. But in terms of

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1 physical withdrawal symptoms, no, I don't recall.

2 Q. Were you able to distinguish different
3 flavors or effects of different cigarette brands?

4 A. I don't know. I don't recall thinking of
5 one brand having a different effect from another.

6 Q. Do you have an opinion as to whether or
7 not a purpose for your smoking was to secure the drug
8 nicotine?

9 MR. SHINGLER: That's outside the scope of the
10 area of which this witness has been called to testify.

11 THE WITNESS: I don't know. All I know is that
12 in certain circumstances I felt I wanted a cigarette,
13 even though 99 percent of the time I knew I never
14 wanted to smoke. I knew permanently I never wanted to
15 smoke, but on occasions I would.

16 MR. BARRON: Q. Is it correct that you do not
17 consider yourself an expert in addiction?

18 A. I am not an expert in chemical aspects
19 that relate to addiction. I have not myself conducted
20 epidemiological studies of addiction, but I have read

21 and am aware of the epidemiological measures that
22 relate to problems of cessation of addictive agents.
23 I have not studied that literature in detail, though,
24 although I would be prepared to testify that based on
25 the studies of quitting that -- using that as a

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1 parameter, cigarette smoking is highly addictive.
2 Q. Do you know the pharmacology of the
3 chemicals or drugs contained in cigarette smoke?
4 A. No, not the detailed pharmacology as a
5 pharmacology expert, no.
6 Q. Do you agree that you're not an expert in
7 toxicology?
8 A. I am an expert in some areas of
9 toxicology, although I'm not primarily a toxicologist.
10 Q. Do you agree that you're not an expert in
11 molecular biology?
12 A. I'm not primarily an expert in molecular
13 biology, although I do considerable research in that
14 area as it relates to certain types of population
15 studies.
16 Q. Do you agree that you're not an expert in
17 psychopharmacology?
18 A. I am not.
19 Q. Do you agree that you're not an expert in
20 psychology?
21 A. I am not.
22 Q. Or psychiatry?
23 A. I am not.
24 Q. Can you tell me the molecular makeup of
25 any compound or drug or substance contained in

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1 cigarette smoke?
2 A. You mean the molecular formula?
3 Q. Yes.
4 A. I do not expect to be testifying about
5 that as an expert, so I wouldn't do it tonight, no.
6 Q. And you wouldn't be able to do it by
7 memory sitting here, correct?
8 A. I don't know, but it's not something I
9 intend to do. I won't be testifying about it.
10 Q. Do you have any knowledge or opinion as to
11 how many people in the United States have successfully
12 quit smoking after a period of time when they were
13 long-term smokers?
14 A. I have read studies on that topic. I
15 haven't got them with me. There are in the Surgeon
16 General's reports I brought data concerning that.
17 Q. Well, other than just looking it up,
18 because I don't mean to demean what you could do,
19 anybody could obviously try to search out the answer
20 to that, do you have any knowledge as you sit here
21 today or any knowledge about that?
22 A. Not off the top of my head, although I
23 could well testify in court about that. I don't like
24 citing numbers off the top of my head. If I were in
25 court I would open books where I know it is located

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1 and answer questions on it.
2 Q. Do you know whether or not there are more

3 or less former smokers in the United States than there
4 are smokers?

5 A. Well, it depends partly whether you count
6 those who have already died from smoking, but in terms
7 of living smokers, there would be more former smokers
8 than current smokers.

9 Q. Do you have any knowledge or opinion
10 concerning what percent of former smokers who were
11 able to quit smoking without any assistance, meaning
12 that they did that on their own without counseling and
13 without any other kind of assistance such as nicotine
14 patches or gum?

15 A. Not off the top of my head. I mean, there
16 are various studies, and it depends on the population
17 studied, the country and the duration and amount
18 smoked per day, and there are data in here, but I
19 can't quote off the top of my head any particular
20 numbers.

21 Q. Do you have any information or opinion as
22 to what the approximate number is for deaths
23 attributable to alcohol in the United States per year?

24 A. No, not off the top of my head.

25 Q. No estimate at all?

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1 A. Not off the top of my head, no.

2 Q. Do you agree or disagree with this
3 statement: Epidemiology does not prove cause and
4 effect but looks for relationships between the
5 incidence of patterns of disease and other variables?

6 A. I do not agree with it.

7 Q. Do you agree or disagree with the
8 statement the most reliable tests for carcinogenicity
9 involves long-term animal testing?

10 A. No, not in terms of humans. Usually when
11 we talk about carcinogenicity, we are talking about
12 humans. And obviously animal studies are the most
13 reliable forms of studies about animal carcinogens,
14 but other studies humans are the most reliable. There
15 are other settings we have where animals are the most
16 reliable. So it's a mixed bag.

17 Q. I want to represent to you that the
18 Surgeon General's report of 1990 states among other
19 things that, quote, "Among former smokers, the decline
20 in risk of death compared with continuing smokers
21 begins shortly after quitting and continues for at
22 least 10 to 15 years. After 10 to 15 years of
23 abstinence, risk of all cause of mortality returns
24 nearly to that of persons who never smoked," close
25 quote.

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1 Do you agree or disagree with that or have no
2 opinion?

3 A. I certainly have an opinion about it. I
4 think it would depend on the context of the statement
5 as to whether I agreed with it. It is true that the
6 part about risks of death in particular from heart
7 disease drop quite rapidly after stopping smoking.

8 With regard to the cancers, after 15 years,
9 there still are, though quite marked increased risks
10 of some of the cancers. Of course they're much more
11 in continuing smokers. So as long as that was

12 understood, I wouldn't disagree with the statement.
13 As such, I think, though, I would be cautious about it
14 in wanting to put it in context.

15 Q. Do you agree, disagree or have no opinion
16 concerning the validity of the following statement:
17 Quote, "Statistical methods cannot establish proof of
18 a causal relationship in an association. The causal
19 significance of an association is a matter of
20 judgment, which goes beyond any statement of
21 statistical probability," close quote.

22 A. Could you read it again please? Can you
23 separate it into two parts?

24 Q. Sure, I'll do that for you, and then we'll
25 combine them together at the end. First part, quote,
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1 "Statistical methods cannot establish proof of a
2 causal relationship in an association," close quote.

3 Do you agree, disagree or have no opinion
4 concerning that?

5 A. I agree with that. By statistical methods
6 I would mean mathematical methods of statistics.

7 Q. Second part. Quote, "The causal
8 significance of an association is a matter of
9 judgment, which goes beyond any statement of
10 statistical probability," close quote.

11 Do you agree, disagree or have no opinion
12 concerning that?

13 A. I would need to see it in context. I
14 don't know what it means as read. But the phrase "the
15 causal significance of," I'm not sure what the writer
16 means by that without seeing the context.

17 Q. Okay.

18 A. I wouldn't make a statement with that
19 wording, but it doesn't necessarily mean I disagree
20 with that. I just don't understand what exactly was
21 meant. And judgment is involved, but there's more to
22 it than that. There's a lot of other science beyond
23 just personal judgment.

24 Q. That, again, comes from one of the Surgeon
25 General's reports.

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1 Let me go to another statement.

2 A. Well, if you add that comment, I'd like to
3 see where it is and see the context of it and I might
4 agree with it.

5 Q. I can't do that for you now, because I
6 don't have that whole part of the report with me.

7 Do you agree, disagree or have no opinion
8 concerning the validity of the following statement:
9 Quote -- I'll strike it and move on to something else.

10 Have you personally done a, quote,
11 "meta-analysis," close quote, of smoking and its
12 relationship to lung cancer?

13 A. Over the years I've done types of
14 meta-analysis, yes, of smoking and lung cancer. I've
15 never done the statistical pooling of relative risk
16 estimates that are sometimes part of a meta-analysis
17 for that particular outcome, or have I? I don't
18 actually recall. But certainly I've done the
19 components of a meta-analysis without necessarily the
20 statistical bit at the end.

21 Q. Were you ever asked to participate in the
22 design of a, quote, "cohort study," close quote, that
23 tried to study smoking and its relationship to the
24 development of primary lung cancer?

25 A. No. I think by the time I was doing

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1 research, it was already an established relationship.
2 So there was no interest of mine on being involved
3 with that. If I were asked, that's what I would have
4 said, that I'd like to get on with researching new
5 areas.

6 I have, though, done research and designed
7 research looking at the joint effects of cigarette
8 smoking both with effect modifying factors such as
9 diet and micronutrients and other causal agents such
10 as asbestos and arsenic along with smoking in causing
11 lung cancer.

12 Q. Trying to wrap up here, I want to do just
13 a couple things. First of all, concerning your
14 present work activities, besides any involvement in
15 medical/legal matters as a consultant or a witness in
16 deposition or at trial, can you indicate how you
17 occupy your time?

18 A. The main two areas are teaching and
19 research and some administration. I'd say about 40
20 percent research, 40 percent teaching and 10 percent
21 administration.

22 Q. And what percentage of your income do you
23 derive from medical/legal matters as a consultant, a
24 deposition witness or as a trial witness?

25 A. Roughly a third.

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1 Q. Now, in this case, you were provided some
2 material by the lawyers representing Ms. Henley,
3 correct?

4 A. Yes.

5 Q. And you were provided -- I want to run
6 through this quickly if I can -- Exhibit 2, correct?

7 A. Yes.

8 Q. Exhibit 4?

9 A. Yes.

10 Q. Exhibit 5?

11 A. Yes.

12 Q. Exhibit 6?

13 A. Yes.

14 Q. Exhibit 7?

15 A. Yes.

16 Q. As well as some depositions, which I'd
17 like to just read off for the record. The deposition
18 of Dr. Gould.

19 A. Yes.

20 Q. Of Dr. Hammar?

21 A. Yes.

22 Q. Of Dr. Horn?

23 A. Yes.

24 Q. Dr. Feingold?

25 A. Yes.

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1 Q. Dr. Benowitz?

2 A. Yes.

3 Q. And the plaintiff Ms. Henley, all three
4 volumes, one, two and three?
5 A. Yes.
6 Q. Did you read all of those depositions in
7 their entirety?
8 A. Not every line. I did read through each
9 of them, but I wasn't trying to read every line. By
10 read through, I mean I studied parts and jumped to
11 other parts and scanned them.
12 Q. You were also provided the declaration of
13 Samuel P. Hammar in support of the plaintiff's
14 opposition to motion to compel, correct?
15 A. Yes.
16 Q. You were also provided some medical
17 records concerning Ms. Henley, correct?
18 A. Yes.
19 Q. And I want to just read those into the
20 record. We don't need to make copies.
21 Giovanni Smith?
22 A. Yes.
23 Q. East Valley Hematology, Oncology
24 Consultants?
25 A. Yes.

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1 Q. In two separate sections, correct?
2 A. Yes.
3 Q. L.A. County U.S.C. Medical Center?
4 A. Yes.
5 Q. St. Joseph's Hospital?
6 A. Yes.
7 Q. Imaging Science Center?
8 A. Yes.
9 Q. Consultants for Lung Disease?
10 A. Yes.
11 Q. And Willie Goffney, G-o-f-f-n-e-y,
12 correct?
13 A. Yes.
14 Q. What did that relate to?
15 A. I don't think this was medical. This was
16 a certification of no records. Why I got that, I
17 don't know.
18 Q. Just for the record, so you know I'm not
19 intentionally excluding anything, you have a copy of a
20 fax or the original fax, I'm not sure which, of some
21 letter sent January 4 from that law firm to you just
22 simply talking about the logistics of the deposition,
23 correct?
24 A. Yes.
25 Q. Now, you also received some material that
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1 was not case specific to Ms. Henley, did you not?
2 A. Yes.
3 Q. And that includes testimony in the
4 Karbiwynk, K-a-r-b-i-w-y-n-k, vs. R.J. Reynolds case
5 of the date of Friday, October 24, 1997 of Mr. Wecker,
6 correct?
7 A. Yes.
8 Q. Did you read that in its entirety?
9 A. No, I glanced at it.
10 Q. Yes.
11 And it's paginated apparently 3528 through 3577

12 with some word index in this condensed version,
13 correct?
14 A. Correct.
15 Q. And then you've got also some material
16 dated that same date of October 24 from the same case
17 identified as rough draft with pages 3582 through 3580
18 and pages 3634 through 3687, and you've also pointed
19 out that the first material that we already identified
20 on the record is also labeled rough draft.
21 Is everything I said true?
22 A. Yes.
23 Q. You also received a transcript from the
24 State of Minnesota case vs. Philip Morris all dated
25 April 30, 1998, pages 234 through 324.

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1 Did you read that?
2 A. No. I just scanned it.
3 Q. Then you have from that same case a
4 transcript of the day before, April 29, 1998, pages
5 168 through 243.
6 Did you read that or just scan it?
7 A. I scanned it.
8 Q. Then we find more from October 24, 1997
9 from the Karibwynk case, rough draft. It's 3690 is
10 where it starts and goes to 3706. Same answer, you
11 scanned it only?
12 A. Correct.
13 Q. Then we have a transcript from the Rogers
14 vs. Reynolds case dated 8-20-96 called the afternoon
15 session starting at pages 2190 and ending at page 2304
16 in this condensed version, along with a couple pages
17 marked 00 at the end and then combined with at the end
18 some word index, correct?
19 A. Yes.
20 Q. Did you read that or just scan it or
21 neither?
22 A. I scanned it. By scanning each of these I
23 read certain parts and scanned most of it.
24 Q. Then some articles were sent to you by
25 Ms. Chaber's office, three in number; is that correct?

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1 A. Yes.
2 Q. I'll mark those, too. These will be
3 returned to you --
4 A. What is going to be copied, just those?
5 Q. Well, we'll stay on the record. Actually,
6 all of this is going to be a deposition exhibit that
7 has been marked or is going to be marked as an
8 exhibit.
9 A. Well, just for the sake of time, is it
10 not -- you've identified them, and you have copies of
11 them. Do you need to have them copied. I like to get
12 copies done the same night, and I assume you have all
13 of these anyway. Just for the sake of the court
14 reporter, I was hoping that you were wanting to
15 identify them all and not copy them all. I would
16 understand that if you didn't have articles, you would
17 want them copied.
18 MR. BARRON: Let me go off the record and see if
19 we can get an agreement here.
20 (Discussion off the record.)

21 MR. BARRON: Q. Will you read the three
22 articles that were sent to you by Ms. Chaber's office?
23 A. One is called "Women and Lung Cancer" in
24 Chest, Volume 112, pages 229S, 234S; then an article
25 titled, "Prying Open the Door to the Tobacco

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1 Industry's Secrets about Nicotine" in JAMA, J-A-M-A,
2 October 7, 1998, Volume 280 starting at page 1173 to
3 1181; and an article called, "Gender Differences and
4 the Outcome of an Unaided Smoking Cessation Attempt,"
5 first author Ward, published in Addictive Behaviors,
6 Volume 22, page 521 to 533, 1997.

7 Q. Then you pulled one article yourself?

8 A. Well, I happened to have it. It's the one
9 I read recently.

10 Q. And would you read that into the record?

11 A. It's called, "Associations Between
12 Cigarette Smoking and Each of 21 Types of Cancer," in
13 a multi-site case control study in the International
14 Journal of Epidemiology, 1995, Volume 24, pages 504 to
15 514.

16 Q. Finally, we have a group of documents that
17 I'm going to have to have marked and have as an
18 exhibit. And we --

19 A. It already is.

20 Q. These documents have on them now an
21 exhibit number 350 in something; it looks like
22 C-o-t-t-e-r or maybe C-a-r-t-e-r, and it's dated
23 10-29-98. They were seven in number.

24 A. Just to help you, I think they were
25 attached to one of the depositions sent to me.

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1 MR. BARRON: Let's go off the record.

2 (Discussion off the record.)

3 MR. BARRON: We'll mark this as Exhibit 8 then
4 to the deposition.

5 And, Doctor, I have no further questions at this
6 time. Thank you.

7 (Documents marked Defendants'
8 Exhibit No. 2 through 8
9 Identification.)

10 (Whereupon, the deposition was concluded
11 at 8:40 p.m.)
12
13

SIGNATURE OF WITNESS

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1 STATE OF CALIFORNIA)

2)
3 COUNTY OF ALAMEDA)
4
5 I, TRISHAE L. JONES, do hereby certify:
6 That ALLAN SMITH, M.D., in the foregoing
7 deposition named, was present and previously sworn as
8 a witness in the above-entitled action at the time and
9 place therein specified;
10 That said deposition was taken before me at said
11 time and place, and was taken down in shorthand by me,
12 a Certified Shorthand Reporter of the State of
13 California, and was thereafter transcribed into
14 typewriting, and that the foregoing transcript
15 constitutes a full, true and correct report of said
16 deposition and of the proceedings that took place;
17 IN WITNESS WHEREOF, I have hereunder subscribed
18 my hand this 14th day of January 1999.
19
20
21
22
23

TRISHAE L. JONES, CSR No. 10170
State of California

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1
2 The deposition of ALLAN SMITH, M.D. taken on 1-8-98
3 has been shipped from the disk of TRISHAE JONES
4
5 DELETE DATA: YES NO
6 CASE NAME:
7 Henley vs. Philip Morris
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9 CLIENTS REQUESTING DISKETTE:
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